THE HONOURABLE SRI JUSTICE N.V.RAMANA

W. P.No.4825 of 1998

Dated:21.03.2007

Between:

Sri G. Syamal Rao.

.....PETITIONER

AND

The Vice Chairman and Managing Director, Girijan Coop. Corporation Ltd., Visakhapatnam and another.

....RESPONDENTS

THE HONOURABLE SRI JUSTICE N.V.RAMANA

W.P.No.4825 of 1998

ORDER:

The petitioner is working as Senior Accountant in the respondent-Corporation. During the course of inspection, the internal audit found that the petitioner and the Manager of the respondent-Corporation made irregular advances to M/s. Sri Venkata Kanaka Adi Jaya Lakshmi Traders, Vjayawada. Thereafter, the respondent-Corporation issued proceedings, dated 25.08.1996 directing recovery of an amount of Rs.29,700-15/-ps. from the salary of the petitioner along with interest at 18% per annum from 15.07.1992. In consequence thereof, memo dated 13.09.1996, was issued fixing the instalments for recovery of the said amount. In terms of the said memo, the 2nd respondent started recovery of the amount in instalments. While so, a charge memo dated 22.10.1996 was issued framing certain charges. The petitioner submitted his explanation on 12.11.1996 denying the charges. An enquiry into the charges is now pending against the petitioner. The grievance of the petitioner is that since the enquiry initiated against him is pending, the action of the respondent-Corporation in recovering the amount from his salary by way of instalments, is illegal and arbitrary. Hence, the petitioner filed this writ petition questioning the proceedings, dated 25.08.1996, issued by the 1st respondent and consequential memo, dated 13.09.1996, issued by the 2nd respondent, as illegal and arbitrary.

2. Learned counsel for the petitioner submitted that though the petitioner submitted his explanation dated 12.11.1996 to the

charges leveled against him, the respondents without considering his explanation and without completing the enquiry initiated against him, have started recovering the said amount by way of instalments, and such action of the respondents, is illegal and arbitrary. He thus prays to quash the impugned proceedings.

3. Respondent-Corporation filed counter-affidavit. Reiterating the counter averments, the learned Standing Counsel for the respondent-Corporation contended that the respondents sent a memo dated 08.06.1996 to the petitioner and another to show cause as to why an amount of Rs.59,400/- along with interest thereon at 18% per annum should not be recovered from their salary jointly, with effect from 15.07.1992, within 15 days from the date of receipt of the said memo, through registered post, and the same was served on both of them, but the petitioner did not acknowledge the receipt of the same, nor submitted any explanation, and therefore, the respondents issued the impugned proceedings for recovery of the said amount from the salary of the petitioner by fixing the instalments.

4 Heard the learned Standing Counsel for the petitioner and the learned Standing Counsel for the respondent-Corporation.

5. When the matter came up for hearing on 22.04.1998, none appeared for the respondents despite service of notice. Therefore, this Court granted interim stay of recovery of the amount from the salary of the petitioner. By the time, this Court granted stay, the respondent-Corporation has already recovered part of the amount. Though the respondent-Corporation contends that they had sent the memo dated 08.06.1996 to the petitioner through registered post calling upon to submit his explanation and that the petitioner failed to acknowledge the receipt of the same nor submitted any reply, the fact remains, the petitioner was working in the respondent-Corporation, and when he was attending to duties, there was no necessity for the respondent-Corporation to send the notice to the petitioner by way of registered post to his residence. The respondent-Corporation, therefore, cannot be allowed to contend that the petitioner refused to receive the notice.

6. Since the impugned orders came to be passed without service of notice to the petitioner, the same cannot be sustained,

and the same is accordingly set aside. However, it is open to the respondent-Corporation to recover the said amount after issuing show cause notice and calling for explanation from the petitioner, and after giving him opportunity of hearing, in accordance with law and the rules of the respondent-Corporation.

7. Accordingly, the writ petition is allowed. No costs.

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N.V. RAMANA, J

Date:21.3.2007.

sj